

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DESIRAE SCOTT, *et al.*,

Plaintiffs,

v.

ANTONIA HEREDIA, *et al.*,

Defendants.

Case No. 1:24-cv-01067-KES-CDB

ORDER TO SHOW CAUSE WHY
SANCTIONS SHOULD NOT BE IMPOSED
FOR PLAINTIFFS' FAILURE TO
PROSECUTE THIS ACTION AND TO
COMPLY WITH THE COURT'S ORDERS

ORDER CONTINUING THE
MANDATORY SCHEDULING
CONFERENCE TO APRIL 16, 2025, AT
9:00 A.M.

ORDER DIRECTING PLAINTIFFS TO
EFFECT SERVICE OF THIS ORDER AND
TO FILE PROOF OF SERVICE

FIVE-DAY DEADLINE

Plaintiffs Desirae Scott, Johnathan Williams, and minors S.W. and D.W. through their guardian ad litem Desirae Scott (collectively, "Plaintiffs"), initiated this action with the filing of a complaint on September 7, 2024. (Doc. 1). Plaintiffs thereafter were granted status to proceed *in forma pauperis*. (Doc. 12). Thereafter, Plaintiffs filed the operative, first amended complaint on December 10, 2024, alleging cause of action against Defendants Antonia Heredia, Dizander Guerrero, Bisola Awaye, Maria Tinoco, Maira Puente, Ashley Bryant, Carole Allen, Desire Lopez, Cynthia Bertrand, and Fatima Dee (collectively, "Defendants"). (Doc. 13).

The day following Plaintiffs' filing of the first amended complaint, the Clerk of the Court

1 issued summonses for service upon Defendants, and the Court entered an order setting a
 2 mandatory scheduling conference for March 13, 2025. (Docs. 14-16). The Court's order
 3 directed Plaintiffs to "diligently pursue service of summons and complaint" and "promptly file
 4 proofs of service." (Doc. 16 at 1). The order further advised Plaintiffs that failure to diligently
 5 prosecute this action "may result in the imposition of sanctions, including the dismissal of
 6 unserved defendants." *Id.* To date, Plaintiffs have not filed proofs of service nor any report
 7 setting forth an explanation for the failure, and no Defendant has appeared in the action.

8 Local Rule 110 provides that "[f]ailure of counsel or of a party to comply with these
 9 Rules or with any order of the Court may be grounds for imposition by the Court of any and all
 10 sanctions...within the inherent power of the Court." The Court has the inherent power to control
 11 its docket and may, in the exercise of that power, impose sanctions where appropriate, including
 12 dismissal of the action. *Bautista v. Los Angeles Cnty.*, 216 F.3d 837, 841 (9th Cir. 2000).

13 In addition, Rule 4(m) of the Federal Rules of Civil Procedure provides: "If a defendant
 14 is not served within 90 days after the complaint is filed, the court - on motion or on its own after
 15 notice to the plaintiff - must dismiss the action without prejudice against that defendant or order
 16 that service be made within a specified time." Fed. R. Civ. P. 4(m). Absent a showing of good
 17 cause, failure to comply with Rule 4(m) requires dismissal of any unserved defendant.

18 Here, the deadline to serve defendants expires tomorrow (March 11, 2025). Absent a
 19 showing of good cause, the Court is required to dismiss unserved defendants pursuant to Rule
 20 4(m).

21 **Conclusion and Order**

22 Based on the foregoing, IT IS HEREBY ORDERED that within three (3) days of entry of
 23 this order, Plaintiffs SHALL show cause in writing why sanctions should not be imposed –
 24 including dismissal of any unserved Defendant or this action in its entirety – for Plaintiffs'
 25 failure to prosecute, failure to serve the summonses and complaint in a timely manner, and
 26 failure to promptly file proof of service. Filing summonses returned executed following entry of
 27 this order WILL NOT relieve Plaintiffs of their obligation to respond to this order in writing.

28 IT IS FURTHER ORDERED that the scheduling conference previously set for March 13,

1 2025, is CONTINUED to April 16, 2025, at 9:00 A.M.

2 And IT IS FURTHER ORDERED that Plaintiffs shall serve a copy of this order on
3 Defendants within three (3) days of entry of this order and promptly file proof of service thereof.

4 **Any failure by Plaintiffs to timely respond to this order to show cause will result in**
5 **the imposition of sanctions, including a recommendation to dismiss this action.**

6 IT IS SO ORDERED.

7 Dated: **March 10, 2025**


UNITED STATES MAGISTRATE JUDGE